IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 9874 of 2007(A)

CMA.42/2005 of ADDL.SUB COURT, IRINJALAKUDA
OS.1766/2001 of ADDL.M.C.,IRINJALAKUDA
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PETITIONER:

GANESAN, S/O.CHERAKULAM KUMARAN,
AZAD ROAD, IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENTS:

KESAVAN, S/O.CHERAKULAM MANI AZAD ROAD,
IRINJALAKUDA VILLAGE DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF I.A. 447/05 FILED BY THE PETITIONER TO SET ASIDE EXPARTE DECREE.

EXT.P2 TRUE COPY OF I.A. 448/05 FILED BY THE PETITIONER TO CONDONE THE DELAY IN FILING PETITION TO SET ASIDE EXPARTE DECREE.

EXT.P3 TRUE COPY OF ORDER DATED 22.6.05 IN I.A.447/05 OF THE MUNSIFF COURT AT IRINJALAKUDA.

EXT.P4 TRUE COPY OF THE ORDER DATED DT. 22.6.05 IN I.A. 448/05 OF THE MUNSIFF COURT, AT IRINJALAKUDA.

EXT.P5 TRUE COPY OBJECTION FILED BY THE PETITIONER TO THE EXECUTION PETITION.

EXT.P6 TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER.

EXT.P7 TRUE COPY OF JUDGMENT DATED 31.11.06 IN CMA 42/05 OF THE SUB COURT AT IRINJALAKUDA.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 9874 OF 2007

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Dated this the 6th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Exts.P3, P4 and P7. The defendant in the case is the writ petitioner before this Court. This is a fight between the uncle and nephew and uncle had obtained a decree. There is a delay of 816 days in filing the petition. The defendant wants to set aside the exparte decree after condoning the delay. The grounds averred are that during the pendency of the case there was a talk of settlement and he was under the bonafide belief that the uncle will not be prosecuting the matter further and therefore he did not take care to see further proceedings and unfortunately the matter has ended in a decree and therefore it requires indulgence at the hands of this Court.

2. I have gone through the orders of the learned Munsiff as well as the learned Sub Judge in this case. A perusal of the order would reveal that the defendant in this case did not file any written statement for a period of 8 months. Even though the Court noted that the written statement is not filed till 27.8.02 the

defendant was set exparte only on 29.11.02. The present application for condoning the delay and setting aside exparte decree is filed only on 5.2.05, i.e, with a delay of 816 days. The learned Sub Judge had considered the contention of the writ petitioner regarding the case of settlement. But it was not in a position to accept that reasons and dismissed the petition.

3. A person who is arrayed as a defendant, whether the suit is between the relatives or not, is expected to follow up the course of matter in the suit. When a suit is settled there must be an effective representation to find out whether the person who had undertaken to withdraw the suit had withdrawn it or not. If there is a talk of settlement there was no necessity for them for attempting to file written statement after a period of 8 months and then not file written statement. Now the defendant has come forward with the application when execution petition is moved by the decree holder. Further it has to be stated that the writ petitioner even had not mounted the box to give any evidence in support of the contention regarding the delay. So, absolutely there is no evidence before the Court to show that there was a valid reason for the delay. I am fully aware of the fact that the broad principles of natural justice demands that an opportunity be given to a person to contest the case on merits. But when it is

proved that there is some thing which amounts to mis- conduct or gross negligence then such an opportunity need not be granted. As held by this Court in **Sreedhara Kurup v. Mickel 1968 KLT 599,** "If there is no sufficient cause the Court cannot restore the suit as a matter of grace. On the other hand, it has always to be remembered that the broad principle of natural justice that informs our judicial institution is that a litigant should not be deprived of hearing unless there has been something equivalent to mis-conduct or gross negligence on his part".

4. This is a classical case where the facts speak for itself regarding the gross negligence and grave misconduct. In such a situation it is not correct on the part of the Court to put the winning party into a loosing position and direct him to face the trial from the very beginning. Therefore, on a perusal of the entire materials available before Court I am convinced that the courts below had properly evaluated the matter and arrived at a right decision and found that there are no grounds to condone the delay and set aside the exparte decree. Therefore, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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